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Supreme Court, U.S.
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In The

Supreme Court of the United States

GEORGE M. PAPA and DEBRA JO PAPA,
Husband and Wife,

Petitioners,

v.

STATE OF ARIZONA; The Arizona Court of Appeals,
Division One; The Arizona Supreme Court;
RUTH V. MCGREGOR; JOHN C. GEMMILL; and
The Arizona Commission on Judicial Conduct,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

AN EXPOSÉ OF THE FALSE DEPLOYMENT OF THE CONFUSED *ROOKER-FELDMAN* DOCTRINE BY THE FEDERAL COURTS

1. Does Landmark *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), which anchors the *Rooker-Feldman* doctrine, have separate Part I and Part II, which are not "inextricably intertwined" with each other, such that under *Feldman* Part II, lower federal courts do have subject matter jurisdiction to review non-judicial state court *legislative* and *administrative* rules promulgations?

2. Does only "mentioning" a state court judgment constitute a forbidden appeal of that judgment to cause dismissal under *Feldman* Part I, when no request was made, and no need exists, for the district court to litigate or disturb that judgment while the district court reviews an allowable rule claim under separate Part II of *Feldman*?

3. Does Arizona's A.R.S. §§ 12-820-823 waive all federal immunities to make Arizona jural for its employee negligence in this case of Papa?

4. Does Papa's timely and unopposed motion for summary judgment require granting under Local Federal Rule 56.1(b)(2)?

PARTIES TO THE PROCEEDING

Petitioners (plaintiffs and appellants below):

GEORGE M. PAPA and DEBRA JO PAPA, *pro se*

1116 East Kramer Circle, Mesa, Arizona 85203

Respondents (defendants and appellees below):

STATE OF ARIZONA; THE ARIZONA COURT OF APPEALS, DIVISION ONE; THE ARIZONA SUPREME COURT; RUTH V. McGREGOR; JOHN C. GEMMILL; and THE ARIZONA COMMISSION ON JUDICIAL CONDUCT.

Represented by Terry Goddard, Esq., Arizona Attorney General, Daniel P. Schaack, Esq., Assistant Attorney General, 1275 West Washington Street, Phoenix, AZ 85007-2926

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CITATIONS FOR MEMORANDA BELOW

The Memorandum Decision of the Court of Appeals for the Ninth Circuit is attached at Appendix 1-2. The Decision Order of the district court granting respondents' motion to dismiss is attached at Appendix 3-13, as well as the district court's subsequent Order denying petitioners' motion for the lower district court to give verification that it will grant petitioners' Rule 60(b) motion, Appendix 14-19. The Order of the Court of Appeals denying the petition for panel rehearing and the petition for rehearing *en banc* is also attached at Appendix 26.

BASIS FOR JURISDICTION IN THIS COURT

The Court of Appeals filed its Memorandum Decision on January 23, 2009. That Court denied the petitioners' petition for panel rehearing and petition for rehearing *en banc* on March 24, 2009. 28 U.S.C. § 1254(1) confers jurisdiction on this Court to review on writ of certiorari the decision of the Court of Appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

The underlying action was brought by petitioners pursuant to **42 U.S.C. § 1983**, which reads as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Action is also brought under **42 U.S.C. § 1981(a)**, which reads as follows:

> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

The petitioners also allege that respondents violated their rights under the Fourteenth Amendment to the U.S. Constitution, the relevant parts of which state as follows:

> **Fourteenth Amendment (Section 1):** "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

I. STATEMENT OF THE CASE

1. SERIOUS ARIZONA STATE COURT ERRORS THWARTED TRUE JUDGMENT

Beginning in 1986, petitioners, also known as "Papa," were disappointed plaintiffs in three civil suits before Arizona state courts. All of these cases involved real estate matters.

Each case was judicially decided against Papa all the way up through the Arizona State Supreme Court level, and all of the standard motions for review were denied. Papa only had minimal counsel, while the other sides were represented by major law firms.

The state courts ignored Papa's showings of the bogus facts and law presented by opposing counsel, and the true law and evidence that fully favored Papa. *See* Record, Exhibit Volumes "IA," "IB," and "IC," attached to Papa's complaint in federal district court.

2. THE ARIZONA STATE COURTS ILLEGALLY REFUSED TO PROCESS PROPER RECONSIDERATION

It was unrealistic to appeal to this Supreme Court so Papa pursued other Arizona law, which is that multiple "good cause" motions for reconsideration are required to be accepted by the state courts and docketed for review and justified correction. Several other Arizona state court litigants had obtained relief from their judgment errors in this way as per Rule 3, ARCAP, Arizona Advisory Opinion 92-10, and *Lindus v. Northern Ins. Co.*, 103 Ariz. 160 (1968), etc. *See also* 14th Amendment, Sec. 1.

Also, Arizona's law of *res judicata*, in *Hall v. Lalli*, 194 Ariz. 54, 977 P.2d 776 (1999), allows the filing of multiple motions for reconsideration under these irregular circumstances. *See Hall*, now quoted:

> Briefly stated, the doctrine of res judicata is that an existing final judgment rendered upon the merits, **without fraud or collusion** by a court of competent jurisdiction, is conclusive as to every point therein and also as to every point raised by the record which could have been decided . . .

Since fraud and collusion had ruined Papa's judgments, then these judgments were not subject to *res judicata.*

For over 18 years, Papa made scores of filings and petitions to the various Arizona State courts to obtain relief from his false judgments, but to no avail. Instead, Papa was ridiculed, humiliated, threatened with incarceration, charged with contempt, fined and constantly denied his efforts to obtain a competent and rightful review for proper justice.

3. ARIZONA WAIVED ITS ELEVENTH AMENDMENT IMMUNITY AND IS LIABLE FOR ITS NEGLIGENCE

Papa can sue Arizona for its express negligence and injury in this case because Arizona is one of nineteen states that waived its Eleventh Amendment Sovereign Immunity, such that under A.R.S.§12-820-823, enacted on April 25, 1984, all Arizona employees and entities, including courts and judges, are deemed to be "persons," and are fully jural and accountable under the "common law" for their errors, omissions, negligence and misconduct, that cause harm or injury to others, with the state itself paying for this injury. The relevant Arizona Statute reads as follows:

Tort Claim Act

Provisions

> A public entity [meaning the state] is liable for injury by the negligence of its employee,

> acting within the scope of his employment, in the same way a private person under similar circumstances would be liable (12-820.04).

Section 1. *Legislative Purpose and Intent*

> A. The legislature recognizes the inherently unfair and inequitable results, which occur in the strict application of the traditional doctrine of sovereign immunity. . . . Consequently, it is hereby declared to be the public policy of this state that public entities are liable for acts and omissions of employees in accordance with the statutes and common law of this state. All of the provisions of this act should be construed with a view to carry out the above legislative purpose.

Arizona plainly waived all its federal immunities, and is liable for the negligence and omissions of its entities and employees. *See also, Doe ex rel. Doe v. State of Arizona,* 200 Ariz. 174, 24 P.3d 1260 (2001) (Arizona was successfully sued for damages) and *Galati v. Lake Havasu City*, 186 Ariz. 131, 920 P.2d 11 (1996). (State Official was sued without immunity for failure to "exercise" a required judicial or legislative function.)

4. PROCEEDINGS BELOW IN DISTRICT COURT

On December 21, 2006, Papa filed an original jurisdiction suit in federal district court against the state judicial entities and employees under 28 U.S.C.

§ 1331. This was for damages caused by the named defendants for failure to do their duty to provide due process, as required by the Fourteenth Amendment, as well as 42 U.S.C. §§ 1981 and 1983, plus other Arizona laws, statutes, and rules, which required them to docket, process, and fix their own shown errors, which omission and negligence caused the loss of Papa's property and resulted in injury to him.

Papa knew that landmark *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983) anchors the *Rooker-Feldman* doctrine, and that Part I of this case bars an appeal of a judicial quality state court final "judgment" by a lower federal court.

However, under separate Part II of *Feldman*, federal courts do have subject matter jurisdiction to review a state court "rule" promulgation, or an "administrative" or "legislative" decision. These non-judicial "doings" are not "judicial judgments," and are therefore outside of *Rooker-Feldman*. Also, all of these state court non-judicial acts are jural in federal court under 28 U.S.C. §§ 1257 or 1331, because Papa's new claims are first-time "original jurisdiction" complaints. The "negative inferences" of the above two federal statutes are what form the foundation of the *Rooker-Feldman* doctrine, and Papa's fresh *Feldman* Part II claims do not conflict with either of those two statutes.

Papa's case centered strictly on a first-time "rules" claim. The first two paragraphs of his federal Complaint, plus other paragraphs, fully established Papa's new state court rules violation claims as follows:

> (1) An action for the deprivation of protected U.S. civil rights which resulted in loss of property and punitive damages caused by the negligence and dereliction of duty by the State of Arizona and its Appellate Court system. . . . [T]o likewise perform declaratory duties of "**due process**."
>
> (2) The omission of duties and negligent administration of the laws here complained of are also a violation of both state and federal **statutes, rules, laws** and **regulations**, which resulted in the improper loss of private property in violation of Amendments V and XIV of the United States Constitution, plus Article 2 of the Arizona State Constitution, together with being a violation of 28 U.S.C. § 1343 and 42 U.S.C. §§ 1981 and 1983.

Papa's federal complaint focused on the state defendants' misconduct, negligence and failure to obey specific **statutes, rules, laws** and **regulations,** which improper and non-judicial "administrative" and "legislative" activity injured Papa.

Opposing counsel was convinced that *Rooker-Feldman* did not apply and made no mention of *Rooker-Feldman* in his Motion to Dismiss. Instead, counsel only argued that the state and its entities and employees could not be sued due to claimed Sovereign Immunity, as provided by the Eleventh Amendment. However, Papa showed that Arizona completely waived its sovereign immunity, for itself and its entities and employees, as shown above

according to A.R.S. §§ 12-820-823, which was signed into law by the governor on April 25, 1984.

5. PAPA'S MOTION FOR SUMMARY JUDGMENT WAS UNREFUTED BY OPPOSING COUNSEL BUT WAS IGNORED IN ERROR BY THE DISTRICT COURT AND SHOULD NOW BE GRANTED

After Papa defeated all of counsel's Motion to Dismiss, then Papa filed in district court a timely Motion for Summary Judgment with an attached Statement of Facts. Incorporated into the Statement of Facts were all of Papa's *Feldman* Part II rules claims, which included all the true rules the state defendants should have obeyed; the many efforts of Papa to obtain relief under those rules; the many refusals by defendants to obey those true rules; the new and false administrative and legislative rules invented by defendants against Papa to deny his due process; plus the damages both actual and punitive.

Opposing counsel did not refute or deny one single paragraph of Papa's valid Statement of Facts as required by local federal rule 56.1(b)(2) to avert summary judgment in favor of Papa.

Counsel was required to refute each paragraph with such persuasion that a reasonable jury would find for opposing counsel. *See Stem v. Gannett Satellite Information Network, Inc.*, 866 F.Supp 355 (1994), which rules as follows:

> Court's function on motion for summary judgment is not to weigh evidence, judge credibility, or in any way determine the truth of matter; rather, court's inquiry is whether evidence presents sufficient disagreement to require submission to trier of fact or whether it is so one-sided that one party must prevail as a matter of law.

Counsel only filed a one paragraph "recognition" of Papa's statement of facts, but made no effort to refute or deny any of the numbered paragraphs that he was required to do under local federal rule 56.1(b)(2). This failure now causes Papa's Statement of Facts to be true in accordance with local federal rule 56.1(b)(2). The only thing left for the district court to do is to grant Papa's full Motion for Summary Judgment, once it is determined that *Rooker-Feldman* does not apply to *Papa*.

Ward v. Karr, District of Arizona, 205 WL 3054070, establishes the penalty for counsel's failure to legally answer Papa's Statement of Facts, and rules on this undisputed concession as follows:

> A court **must** grant summary judgment if the pleadings and supporting documents viewed in the light most favorable to the non-moving party, "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed. 2d 265 (1986) . . . In addition, the dispute must be

> genuine, that is, "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

In this case, the district court must only assess whether or not defendants legally refuted each numbered paragraph of Papa's Statement of Facts, such that a reasonable jury would rule in favor of defendants on these clear claims of liability against the state. Defendants did not legally refute or deny any paragraph, so there is no dispute whatsoever.

Granting Papa's motion for summary judgment is merely the legal conclusion to a *de facto* mutual agreement between the parties. The state defendants, through counsel, have simply conceded, and agreed by their own legal acquiescence, that they are fully liable for their injuries to Papa. Such a granting by the district court is not a violation of *Rooker-Feldman*, nor is it barred by 28 U.S.C. §§ 1257 or 1331. It is also consistent with *Feldman* Part II as a means to conclude a valid and fully jurisdictional rule attack.

6. THE DISPUTE IN THIS CASE

The district court in this case decided two separate questions in a manner that squarely conflicts with the paramount ruling of this Supreme Court's benchmark case of *D.C. Court of Appeals v. Feldman*, as well as the Ninth Circuit's own landmark case of *Noel v. Hall*, and moreover is a

matter of confusion for every other circuit court in the land.

(A) That merely "mentioning" a disappointing state court judgment constitutes a barred *de facto* appeal under *Rooker-Feldman*, to force dismissal of the entire case. This notion is false.

(B) That allowable *Feldman* Part II "rule" claims are "inextricably intertwined" with court perceived *Feldman* Part I "appeal" notions, to force dismissal under *Rooker-Feldman*. This idea is also false.

The district court ruled in blindside surprise, and thus by illegal *sua sponte* means, that *Rooker-Feldman* applied to force dismissal of *Papa*. Papa had no chance to be heard or to respond prior to judgment, as required by *California Diversified Promotions, Inc. v. Musick*, 505 F.2d 278 (9th Cir., 1974). The court ruled in error as follows, *see* Appendix 9:

> In light of the fact that the Plaintiffs **raise issue** with prior state court decisions and judgments in their Complaint, this Court finds that it is appropriate to address this Court's subject matter jurisdiction and the significance of the *Rooker-Feldman* doctrine *sua sponte*. Under what has become known as the *Rooker-Feldman* doctrine, federal district courts lack jurisdiction to review the judgments and decisions of state courts. (Citing *Feldman* then *Rooker*).

Here the court falsely ruled that merely to "**raise issue**" with a state decision was a forbidden "appeal"

to force automatic and *sua sponte* dismissal. Merely "mentioning" a disappointing state court judgment is not a request to perform a formal appeal to directly undo or reverse that judgment. Such a "mention" does not form any basis to dismiss the "rule" portion of a *Feldman* Part II complaint. In the controlling case of *Feldman*, both Mr. Feldman and Mr. Hickey did more than simply "mention" a disappointing state court judgment. They actually requested a formal and barred appeal of their disappointing state court judgments, along with their separate rule claim.

Notwithstanding, even though their forbidden "appeal" portion was properly denied, this Court remanded the separate "rules" portion of that case for a determination and the same should apply to Papa. This is the crux of overlooked *Feldman* Part II, which this Supreme Court should now emphasize.

A key flaw of the above district court, which is often repeated by other federal courts, including the *en banc* Ninth Circuit in this case, is the failure of those courts to distinguish that numerous state court "decisions" are non-judicial, administrative or legislative acts, and these decisions do have subject matter jurisdiction for review in lower federal courts.

The landmark case of *Feldman* Part II expressly provides subject matter jurisdiction for lower federal courts to "reign in" the mischief of state courts. Instead, the lower district court in this case did the opposite and openly "cut out" this check and balance safeguard provided by *Feldman* Part II. *See now*

district court Order dated April 15, 2008, attached as Appendix 18, and now quoted as follows:

> In the instant action, Plaintiffs' attempt to draw a distinction between (1) the [rules] elements of their complaint that challenge the state courts' decisions to summarily reject their multitudinous motions for reconsideration [under *Feldman* Part II], and (2) the [appeal] elements of their complaint that attack the state court's judgments on the merits of plaintiffs' lawsuit. However, such a distinction here is one **without meaning.** Plaintiffs' [rules] challenge to the summary rejection of their multitudinous motions for reconsideration [under *Feldman* Part II], is **inextricably intertwined** with Plaintiffs' de facto challenge to the judgments on the merits of their lawsuit [forbidden appeal, under *Feldman* Part I]. *See Noel v. Hall*, 341 F.3d 1148 (9th Cir., 2003).

The district court held in error there was an "appeal element" to Papa's complaint but it also saw there was a separate "rule element" as well. However, the appeal element did not exist. The key error was that the district court believed that since Papa merely "raised issue" with a state court judgment, that this simple "mentioning" constituted an official but phantom "appeal", to force dismissal of the entire case under *Rooker-Feldman*. However, as shown, if there is no actual appeal, there is no *Rooker-Feldman*.

Also, the district court saw but erroneously rejected Papa's separate "rule" claim element in his

complaint, because the court believed in error that – in the court's own words – "such a distinction here is one without meaning," because the two are expressly "inextricably intertwined."

To the contrary, a *Feldman* Part II claim is independent from a *Feldman* Part I claim, and is not "inextricably intertwined" to cause dismissal of that separate Part II rule claim.

Even if Papa did have an official "appeal" request in his complaint, that portion only should have been dismissed, and his separate "rule" claim should have received full review in district court. Both the district court and the Ninth Circuit Court of Appeals, plus other circuits, customarily miss this point of law as to what constitutes an official appeal, and also, that *Feldman* Part I and Part II issues are not "inextricably intertwined" with each other to cause tandum dismissal. This key misunderstanding causes havoc throughout the nation, and it should now be dramatically corrected by this United States Supreme Court.

7. RESULTS OF APPEAL TO THE NINTH CIRCUIT

Papa appealed to the Ninth Circuit Court of Appeals where a three-judge panel ruled that the district court made no error at all. *See* Appendix 1. Papa then filed both a Petition for Re-Hearing *en banc* and a Petition for Panel Re-Hearing. On March 24, 2009, the Ninth Circuit Court of Appeals unanimously denied Papa's petitions. *See* Appendix 26.

II. REASONS FOR GRANTING CERTIORARI

1. THIS HIGH COURT SHOULD DEFINE CITIZENS' RIGHTS AGAINST AN ERRANT STATE COURT

This case and brief clarifies the highly misunderstood and confused *Rooker-Feldman* doctrine, whose interpretation is deeply fractured among the lower federal courts.

The *Rooker-Feldman* doctrine defines the bright-line extent to which lower federal courts do have jurisdiction to control maverick state courts. There should be no mystery on this national question. However, *Rooker-Feldman* has been falsely, eagerly and massively expanded by the lower federal courts to remove nearly all exercise of any jurisdiction over any state court doing at all.

The consequence is that U.S. citizens are now caught helpless and without any realistic recourse over rogue state courts, yet the benchmark case of *Feldman* itself establishes otherwise. Clearly the power of this Supreme Court should now nail the truth of this matter that affects the nation.

Society cannot bear to have state courts fail to process and to fix their own judicial errors with impunity, as required by state and federal law. If state courts fail this duty, as painfully shown in this case of *Papa*, then Papa is entitled to rely on already established *Feldman* Part II for relief, which must now be solidified by this United States Supreme Court.

Particularly answered for the first time is the key difference between *Feldman* Part I and *Feldman* Part II; what constitutes an actual forbidden appeal into district court; plus the misunderstood meaning of "inextricably intertwined," all of which are anchored in the landmark case of *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, but is ignored.

2. FEDERAL COURTS ARE DEEPLY SPLIT AND CONFUSED ON *ROOKER-FELDMAN* DOCTRINE

To further confirm the critical state of confusion as to the present *Rooker-Feldman* doctrine, a Duke Law Journal Review by Allison B. Jones, 56 Duke L.J. 643, is now quoted:

> A primary source of the [*Rooker-Feldman*] doctrine's **expansion** and the consequent **confusion** has been the "inextricably intertwined" inquiry introduced by *District of Columbia Court of Appeals v. Feldman*. Supreme Court opacity concerning what it means to be inextricably intertwined has resulted in significant **incongruity** in the lower federal courts, which is all the more troubling in light of the frequency with which these courts employ the concept, often to deny federal jurisdiction.

The above Jones Report then identified the four major variations to the term "inextricably intertwined," which are used by the lower federal courts to routinely misconstrue and to dismiss cases:

(1) ***The Res Judicata Approach*** equates "inextricably intertwined" with the traditional "could have been raised" standard of preclusion. At best, this is a cloudy whim.

(2) ***The Marshall Approach*** links "inextricably intertwined" with a previous state judgment such that if, for the plaintiff to prevail, the district court must make a determination that indicates that the state court was wrong about some matter. If so, such a claim is dismissed. This approach would routinely dismiss established *Feldman* Part II jurisdiction for separate non-judicial rules claims.

(3) ***The GASH Approach*** is that "inextricably intertwined" forces dismissal if the federal claim alleges an injury caused by the state judgment, or, if the federal claim alleges an independent prior injury that the state court failed to remedy. This confusion sweeps away *Feldman* Part II.

(4) ***The Noel Approach*** properly defines "inextricably intertwined" to be consistent with *Feldman*. It also recognizes lower federal court jurisdiction to review non-judicial state court legislative and administrative doings, yet this approach is widely ignored.

All of these above separate approaches spread and overlap throughout the nation as to what "inextricably intertwined" actually means, which should now be clarified. Also noted in the above Jones Report is that even though this Supreme Court discussed *Rooker-Feldman* in *Exxon Mobil Corp. v. Saudi Basic Indus.*

Corp., 544 U.S. 291 (2005), it did not explain "what it means to be inextricably intertwined."

The Ninth Circuit's own published Opinions in *Bianchi v. Rylaarsdam*, 334 F.3d 895 (9th Cir., 2003), then *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855 (9th Cir., 2008), plus their recent treatment in *Papa* (2009), all clash head-on with the Ninth Circuit's own case of *Noel* (2003), as well as directly with this Supreme Court's benchmark case of *Feldman* (1983).

3. CERTIORARI SHOULD BE GRANTED TO CLEAN UP THE FALSE EXPANSION AND CONFUSION OVER "INEXTRICABLY INTERTWINED" AS SHOWN

As used in *Feldman*, "inextricably intertwined" only means to be "**connected,**" More precisely, it only means to be "**clingingly connected.**" The more important question is this: What is connected to what?

In *Feldman*, only those federal "allegations" that are "inextricably intertwined" – meaning that they are a mirror image of previous state court judicial judgment elements already decided in a state court – or which are prohibited by 28 U.S.C. §§ 1257 or 1331, are the only allegations that cannot be re-litigated in a lower federal court. All other state court "non-judicial" judgment elements, or else separate attacks on state court rules, do have subject matter

jurisdiction for review in a lower federal court under *Feldman* Part II. *See Feldman*, 460 at pp. 476.

The fact that the separate Part II state court "rules review" portion of *Feldman* was remanded back to the district court shows that "inextricably intertwined" does not extend to deny lower federal court review over this separate category of "non-judicial" and injurious state court rules attacks.

4. *FELDMAN* IS DIVIDED INTO TWO PARTS AND PART II MUST BE CEMENTED AS BEING VIABLE

Feldman itself is divided into two parts. The first section, known here as Part I, establishes that state court judicial "judgments" only, **cannot** be relitigated in a lower federal court. However, Part II establishes the separate non-judicial and non-prohibited state court "actions," that **can** be litigated in a lower federal court.

"Administrative" decisions, "legislative" decisions, and particularly "rules" promulgations are examples of non-judicial state court actions which are not judicial-quality finished "judgments," and they are not in conflict with 28 U.S.C. §§ 1257 or 1331 for litigation in a lower federal court. Consequently, these items are outside of *Rooker-Feldman* and the phrase "inextricably intertwined" does not extend to them, so these state court acts do have jurisdiction for review in lower federal courts.

Both times when "inextricably intertwined" was used in *Feldman*, it was only with reference to a forbidden Part I "judicial" element, that is barred from being litigated in a lower federal court. The phrase "inextricably intertwined" was never used to refer to the separate Part II class of state court "non-judicial" elements or doings, such as particular state court "rules" promulgations, that do have subject matter jurisdiction for review in federal courts. *Papa* should not have been dismissed according to this true application of the law.

In the case of *Feldman*, this U.S. Supreme Court was called upon to answer two questions: (1) whether a lower federal court could overturn Mr. Feldman and Mr. Hickey's judicial-quality state court "judgment" they were disappointed in, and (2) whether or not a lower federal court could review the non-judicial, administrative and legislative state court "rule," which was claimed to be arbitrary and unconstitutional that the state court judgment was based upon.

The ruling as to the first question, which is Part I of *Feldman, supra,* is now quoted below:

> The District of Columbia Circuit properly acknowledged that the United States District Court is without authority to review final determinations of the District of Columbia Court of Appeals in judicial proceedings. Review of such determinations can be obtained only in this Court.

However, as to the nearly forgotten and second Part II question, which is the heart and soul of this case, this Supreme Court in *Feldman* granted subject matter jurisdiction for lower federal courts to adjudicate separate rules claims as follows:

> A determination that the proceedings on Feldman and Hickey's petitions were judicial does not finally dispose of this case. * * * To the extent that Hickey and Feldman mounted a general challenge to the constitutionality of Rule 46 1(b)(3), however, the District Court did have subject matter jurisdiction over their complaint.

Papa's case is the same. Papa mounted a general challenge to the constitutionality of various non-judicial state rules promulgations, more specifically for the state's failure to obey true rules.

The lower federal courts have subject matter jurisdiction over separate Part II "rules" claims. The *Feldman* case ruled expressly on this subject:

> Challenges to the constitutionality of state bar rules, therefore, do not necessarily require a United States District Court to review a final state court judgment in a judicial proceeding. Instead, the District Court may simply be asked to assess the validity of a rule promulgated in a non-judicial proceeding. If this is the case, the District Court is not reviewing a state court judicial decision. In this regard, 28 U.S.C. § 1257 does not act as a bar to the District Court's consideration of the case and because

> the proceedings giving rise to the rule are non-judicial, the policies prohibiting United States District Court review of final state court judgments are not implicated. United States District Courts, therefore, have subject matter jurisdiction over general challenges to state bar rules, promulgated by state courts, in non-judicial proceedings, which do not require review of a final state court judgment in a particular case.

Here this Supreme Court in *Feldman* distinguished that state court "non-judicial proceedings" are reviewable in lower federal courts, such as rule promulgations. For this reason, *Feldman* is divided into two parts, and the two are separate and are not inextricably intertwined. The Supreme Court in *Feldman* then further ruled as follows:

> The respondents' claims that the *rule* is unconstitutional because it creates an irrebuttable presumption that only graduates of accredited law schools are fit to practice law, discriminates against those who have obtained equivalent legal training by other means, and impermissibly delegates the District of Columbia Court of Appeals' power to regulate the bar to the American Bar Association, do not require review of a judicial decision in a particular case. The District Court, therefore, has subject matter jurisdiction over these elements of the respondents' complaints. * * * The judgment of the District of Columbia Circuit is vacated and the cases are remanded to the District

Court for further proceedings consistent with this opinion.

Likewise, Papa also challenged an unconstitutional, discriminatory, non-judicial, administrative and legislative *rule*, which is not a prohibited "appeal" of a judicial quality judgment. Separate *Feldman* Part II rules attacks "do not require review of a judicial decision in a particular case."

The object is that once a district court litigates a state court rule, and determines that the rule is false because it is discriminatory or unconstitutional, then any judgment or judgment disposition connected to that rule is also false, and all aspects of that false judgment are subservient to the jurisdiction of the district court. This includes judgment reversal and any award of appropriate damages. Otherwise, it is pointless for a district court to review a state court rule. As an example to the nation, Papa's separate and paramount rule claims should now be determined or remanded as in *Feldman*.

5. UNDER *FELDMAN* PART II, IF A STATE COURT RULE IS UNDONE IN FEDERAL COURT, THEN THE FEDERAL COURT ALSO CONTROLS THE AFFECTED AND THUS FLAWED JUDGMENT

In the event Papa prevails on his rules claims, then full and subsequent disposition of the flawed judgment is under the jurisdiction of the district court to achieve justice.

By the time the Supreme Court remanded Mr. Feldman and Mr. Hickey, both had pursued other careers and neither had any further interest in taking the D.C. bar exam.

Before his federal suit even started, Marc Feldman was admitted to the Maryland State Bar on June 1, 1977, and to the Virginia State Bar on April 30, 1976. In 1982, one year before the remand, he began a career as a law professor at Rutgers Law School, which he continued at the University of Maryland School of Law until his death in 1998.

The lower federal court civil docket sheet No. 78-1276 for Edward J. Hickey, Jr. shows that a "STIPULATION of dismissal" between Hickey and the D.C. Court of Appeals was accepted and entered by the district court on December 10, 1984.

Even so, the federal district court took full control and jurisdiction of every aspect of Mr. Hickey's original state court judgment. The mutual agreement between Hickey and the State Court to dismiss as equals, and the fact that the stipulation was accepted and closed by the district court, shows that the normally untouchable state court judgment was fully subservient to the district court.

This precedent, plus the operation of the remand itself, shows that upon jurisdiction by a district court to determine a state court "rule" question, then the result of that inquiry is subservient to the district court to complete the full and just disposition of all aspects of that prior state court "judgment."

In this manner, an injured state court litigant can gain full relief, including damages, in lower federal court under *Feldman* Part II. The alternative is that state court judgments that are shown to be false are allowed to unjustly stand.

6. *EXXON MOBIL* DID NOT FIX THE *ROOKER-FELDMAN* CONFUSION

Four years ago, this Supreme Court handed down its decision in *Exxon Mobil, supra*, which was heralded as clarifying some of the *Rooker-Feldman* questions, but certainly not all of them. Extensive confusion continues to persist regarding what constitutes "inextricably intertwined" and particularly, what constitutes the exact type of a state court "decision" that can be appealed for review and disturbance into a lower federal court.

According to *Exxon Mobil*, *Rooker-Feldman* only bars lower federal court jurisdiction if all of the following four elements are completely met:

(1) The case must be brought by a state court loser.

(2) The injury alleged must be caused by the state court judgment.

(3) The judgment must have been rendered before the district court proceedings commenced; and

(4) The case must invite district court review and rejection of that judgment.

The meaning of the word "judgment" above also begs definition, in order to clarify that certain non-judicial, administrative and legislative state court "decisions" can be reviewed in a lower federal court. This confusion allows lower federal courts to wrongfully expand the *Rooker-Feldman* doctrine to perfunctorily dispose of cases, as happened to Papa.

Currently, nearly all federal cases are quickly dismissed if they merely touch on a state court "doing." Nevertheless, litigants must be able to rely on *Feldman* Part II for federal court jurisdiction to review indolent state court rules misconduct.

Rooker-Feldman only bars finished and limited "judicial quality" state court judgments from direct federal court appeal and disturbance. Not barred are administrative, clerical, legislative or any other non-judicial quality state decisions.

Two of the four above elements established by *Exxon Mobil*, that must all be present for dismissal under *Rooker-Feldman*, do not apply to *Papa*, so *Papa* is outside of *Rooker-Feldman*. Now four years after *Exxon Mobil* there is still confusion on what constitutes *Rooker-Feldman*.

Number (2) does not apply because the "judgment" is not Papa's proximate injury. Instead, it was the failure of the "original jurisdiction" state court defendants to accept, docket, process and review Papa's valid and specific "good cause" motions for reconsideration of the state court's judgments. Papa

brought a superior rule complaint, not a subservient judgment complaint.

Feldman and Hickey were remanded to litigate their rule complaint, which this Supreme Court held to be superior to their judgment complaint issue, to the extent that the rule complaint inquiry had power to reverse the judgment, in the event Feldman and Hickey should prevail on the rule issue.

It was defendant's failure and negligence to not provide required due process that caused Papa's injury. Previously, these defendants had properly processed other multiple motions for reconsideration to correct other false judgments for similarly abused litigants.

Number (4) does not apply because there was no appeal and Papa's complaint did not invite the district court itself to **initially** or **directly** review or reject any state court judgment, as established in *Feldman* Part II. Rather it was the named defendants that disobeyed their own rules and failed to review their own judgments that were shown to be flawed, all as per the law and the evidence of the case, and the shown and "due process" means for required review.

The initial determination of a state court rule claim does not undo or cause review of any state court judgment. Only **after** a finding that an Arizona court rule was not "exercised" or is invalid, then the connected judgment is also flawed and subject to disturbance in federal court, as per *Feldman* Part II.

7. PAPA WAS INJURED BY NON-JUDICIAL STATE COURT *ADMINISTRATIVE* AND *LEGISLATIVE* ACTS THAT A FEDERAL COURT CAN REVIEW

A bundle of separate Arizona rules and regulations required the Arizona Courts to docket and to process Papa's express "good cause" motions for reconsideration for review and correction according to law. These included Rule 3, of the Arizona Rules of Civil Appellate Procedure, Arizona Supreme Court Advisory Opinion 92-10, and the Arizona Constitution, Art. 6.1 § 4A, together with Arizona Revised Statutes §§ 12-820-823, plus other precedents cemented in existing Arizona case law.

By these means, other litigants had succeeded in obtaining relief from erroneous Arizona State Court false judgments, such as Mr. Lindus in the precedent case of *Lindus v. Northern Ins. Co.*, 103 Ariz. 160 (1968). *See also*, *Gondeck v. Pan Am Airways*, 382 U.S. 25 (1965); and *Overson v. Martin*, 90 Ariz. 151, 367 P.2d 2003 (1961). Mr. Lindus had been denied twice by the Arizona Supreme Court, yet on his third (multiple) motion to that High Court to correct its own judgment error, then that court finally saw its error; realized that true justice overruled any other consideration; processed that multiple motion for reconsideration; **reversed its own error**; and ruled as follows for the benefit of Mr. Lindus and others:

> Where the interests of justice outweigh the interest in bringing litigation to an end, the

> court should recall the mandate. Of course, where there has been either fraud, imposition, or mistake of fact, the court can always recall the mandate to modify or correct **its own judgment.**

Clearly Arizona courts must fix their own errors as shown. Papa pursued this legal process, but was instead singled out and wrongfully denied the true consideration that the law required to be granted to all people. The rejection of Papa's due process was an "administrative" act, not a "judicial" act, which is not barred by *Rooker-Feldman* and it is reviewable for error and injury by a lower district court.

Moreover, the individual letters and orders of rejection to Papa from various clerks and judges were only "legislative" acts, which changed prior policy that was based upon existing law to suddenly be a new change for the future.

Such a departure from past or present law, and the establishment of new and future procedure is a "legislative" doing, which is not barred by *Rooker-Feldman*, and is therefore fully reviewable for error and injury by a federal court. Likewise, such *administrative* and *legislative* acts by a state court are not prohibited from lower federal court review by 28 U.S.C. §§ 1257 or 1331. *Feldman* puts it like this:

> A crucial question in this case, therefore, is whether the proceedings before the District of Columbia Court of Appeals were judicial in nature. As the District of Columbia Circuit recognized, it is a question of federal law

> whether "a particular proceeding before another tribunal was truly judicial" for purposes of ascertaining the jurisdiction of a federal court. * * * A judicial inquiry investigates, declares and enforces liabilities as they stand on present or past facts and under laws supposed already to exist. That is its purpose and end. Legislation on the other hand looks to the future and changes existing conditions by making a new rule to be applied thereafter to all or some of those subject to its power. * * * The form of the proceeding is not significant. It is the nature and effect that is controlling.

Here in *Papa*, the state court in a non-judicial, and administrative manner, changed the existing rules and invented a new and future "legislative" rule to wrongfully dismiss Papa, which is reviewable in *federal court.*

8. THE NINTH CIRCUIT'S *REUSSER* CASE IS DISCREDITED, CONFUSING AND NOT VIABLE

Three years after *Exxon Mobil*, the Ninth Circuit Court of Appeals used its own *Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855 (9th Cir., 2008) to wrongfully dismiss Papa.

The key *Reusser* language that was used to dismiss *Papa* was copied from the highly discredited similar case of *Bianchi v. Rylaarsdam*, 334 F.3d 895 (9th Cir., 2003). The key question in both *Reusser* and

Bianchi was strictly whether or not a lower federal court could overturn a judicial quality state court judgment. *Bianchi* ruled as follows:

> If claims raised in the federal court action are "inextricably intertwined" with the state court's **decision** such that the adjudication of the federal claims would undercut the state ruling or require the district court to interpret the application of state laws or procedural rules, then the federal complaint must be dismissed for lack of subject matter jurisdiction. *See Feldman*, 460 U.S. at 483 n. 16 & 485, 103 S.Ct. 1303.

This is not at all what *Feldman* said at page 483, in footnote 16. Instead, this is the correct language that *Bianchi* should have quoted:

> If the constitutional claims presented to a United States District Court are inextricably intertwined with the state court's denial in a **judicial proceeding** of a particular plaintiff's application for admission to the state bar, then the District Court is in essence being called upon to review the state court decision. This the District Court may not do.

It was irresponsible for the Ninth Circuit in *Bianchi* to fail to distinguish that there is a key legal difference between a state court *clerical, administrative* or *legislative* decision, that can be reviewed by a district court, as opposed to a separate and "judicial proceeding" **judgment** decision, that cannot be reviewed by a district court, as correctly stated in *Feldman*.

This improper expansion of *Rooker-Feldman* is now a national problem. Moreover, *D.C. Court of Appeals v. Feldman* does not bar a lower federal court from undercutting state laws or procedural rules themselves. These are not "judicial proceedings" and are not barred by *Rooker-Feldman*. Otherwise, *Feldman* Part II would be wrongfully obliterated.

The flaw in both *Bianchi* and *Reusser* is that they are a limitless standard that is eagerly used by lower federal courts to dismiss any claim, including a *Feldman* Part II rules claim, that can be perceived to touch on any state court "doing," contrary to *Feldman* Part II as shown.

A member of the *Bianchi* panel, the Honorable Betty B. Fletcher, wrote a partial dissent and a scathing rebuke of her fellow panel judges regarding *Bianchi* as follows:

> In sum, I conclude that Bianchi's case is barred because he seeks to have the federal district court overturn the California Supreme Court's decision on his federal due process claim . . . I respectfully concur **only** in the judgment . . . [T]he majority goes on to enunciate a sweeping doctrine of "appellate jurisdiction" for *Rooker-Feldman* purposes. The majority relies almost exclusively on analytically confused authority from other circuits to create a standardless test for improper "appellate jurisdiction . . . " The majority's disquisition does not resolve confusion about the proper **application** and **scope** of the *Rooker-Feldman* doctrine, but

> will leave litigants and our district courts, if anything, more confused.

Even opposing counsel concedes that *Bianchi* is flawed, *see* page 18 of his Answering Brief to the Ninth Circuit Court of Appeals as follows:

> A different panel of this Court later took issue with *Bianchi's* interpretation of *Feldman*, stating that the "inextricably-intertwined" test operates only on some claims, once it has been determined that other claims are barred by *Rooker-Feldman*.

Three months after *Bianchi*, a separate Ninth Circuit panel handed down landmark *Noel v. Hall*, 341 F.3d 1148 (9th Cir., 2003), which refuted *Bianchi*, but *Bianchi* got repeated into *Reusser*, which then was used against Papa. Neither *Bianchi* nor *Reusser* are worthy precedents to define *Rooker-Feldman* or to control *Papa*, because they both destroy *Feldman* Part II.

Papa's appeal to the Ninth Circuit only resulted in a one paragraph affirmation of the district court's dismissal of *Papa* as follows: *See* Appendix 1.

> George M. Papa and Debra Jo Papa appeal pro se from the district court's judgment dismissing for lack of subject matter jurisdiction their civil rights action challenging allegedly erroneous state court decisions. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir., 2003), and we affirm. The district court properly concluded that the

> *Rooker-Feldman* doctrine barred the Papa's action because it is a "de facto appeal" of state court decisions, and raises constitutional claims that are "inextricably intertwined" with those prior state court decisions. *See Reusser v. Wachovia Bank, N.A.*, 525 F.3d 855, 859 (9th Cir., 2008) (explaining that a federal action is barred if adjudication of the federal claims would undermine the state ruling or require the district court to review the application of state laws or procedural rules).

Contrary to *Reusser*, Papa did not seek to relitigate the same claims in federal court as had already been litigated in state court. Papa only attacked separate state court "rules" promulgations and not any judicial "judgments."

Reusser does not recognize jurisdiction for a *Feldman* Part II rule claim, yet *Valenti v. Mitchell*, 962 F.2d 288 (3rd Cir., 1992) does recognize such jurisdiction. (The *Rooker-Feldman* doctrine does not prevent federal district courts from reviewing non-adjudicative or administrative acts of state courts).

The Ninth Circuit itself is split between two opposite versions of the *Rooker-Feldman* doctrine. One version is found in *Reusser supra*, and the other version is found in *Noel v. Hall,* 341 F.3d 1148 (9th Cir., 2003).

Such a wide split among all circuits on this vital and far-reaching national issue should be clarified by this U.S. Supreme Court.

Papa centered only on a separate and allowable state court "rule" attack under *Feldman* Part II, and was not an appeal of a judicial quality state "judgment" as was the case in *Reusser*. Even if Papa's complaint did feature a prohibited "appeal," as barred by §§ 1257 and 1331, then upon dismissal of that forbidden "appeal" portion, Papa's separate "rules" attack portion remains for litigation, as per *Feldman* Part II.

The now quoted *Reusser* ruling reflects the error of the district court and also the error of the Ninth Circuit, contrary to *Feldman* Part II and the facts of Papa:

> A federal action constitutes such a *de facto* appeal where "claims raised in the federal court action are 'inextricably intertwined' with the state court's decision such that the adjudication of the federal claims would **undercut** the state ruling or require the district court to interpret the application of state laws or procedural rules." *Bianchi*, 334 F.3d at 898. In such circumstances, "the district court is in essence being called upon to review the state court decisions." *Feldman*, 460 U.S. at 483 n. 16, 103 S.Ct. 1303.

This false, hopelessly broad and limitless definition of "inextricably intertwined" only reflects discredited and flawed *Bianchi*, and has no bounds or consistent interpretation. This ruling confuses and obliterates any distinction between *Feldman* Part I and *Feldman* Part II.

However, under governing *Feldman* Part II, this Supreme Court remanded such a separate rules claim back to the district court with power to exactly undercut the state court judgment in question, if the rule that dictated the result of that judgment should be found to be invalid.

These rule claims are a check and balance over state court legislative and administrative doings. They are designed to cause judicial accountability to the end that state courts will be receptive to correcting their own judgment errors, which they refused to do for Papa.

9. *NOEL* PROPERLY DEFINES *ROOKER-FELDMAN*, ETC., BUT IS WRONGFULLY IGNORED

Noel supra clarifies the difference between *Feldman* Part I and *Feldman* Part II; what constitutes an appeal; plus the true definition of "inextricably intertwined" as follows:

> The premise for the operation of the "inextricably intertwined" test in *Feldman* is that the federal plaintiff is seeking to bring a forbidden de facto **appeal**. The federal suit is not a forbidden de facto appeal because it is "inextricably intertwined" with something. Rather, it is simply a forbidden de facto appeal. Only when there is already a forbidden de facto appeal in federal court does the "inextricably intertwined" test come into play: Once a federal plaintiff seeks to bring a

> forbidden de facto appeal, as in *Feldman*, that federal plaintiff may not seek to litigate an issue that is "inextricably intertwined" with the state court *judicial decision* from which the forbidden de facto appeal is brought.

Noel is consistent with key *Feldman*. Nothing is "inextricably intertwined" with anything to cause dismissal, unless first there is a clear forbidden appeal, which did not exist in *Papa*. Absent an appeal, there is no *Rooker-Feldman*. *Noel* also rules:

> Because the federal and state court claims arose out of the same sequence of interrelated events, the issues in the federal and state court litigation were almost certainly inextricably intertwined in the ordinary language sense. But the issues were not "inextricably intertwined" in the sense of *Rooker-Feldman*. Because Noel has not brought a forbidden de facto appeal from any of the earlier state court judgments, the "inextricably intertwined" analysis of *Feldman* does not apply.

Papa's rule claims also resulted from his false state judgments, as was the case in *Feldman* Part II. However, Papa did not appeal any judgment into federal court, and no disturbance of a state judgment is required to process a separate rule claim. Consequently, the term "inextricably intertwined" does not apply to dismiss Papa, yet the federal courts summarily dismissed Papa's separate rule claims for falsely expanded "inextricably intertwined" reasons.

The continuation of *Noel* is now quoted:

> The *Rooker-Feldman* doctrine asks: is the federal plaintiff seeking to set aside a state judgment, or does he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party? If the former, then the district court lacks jurisdiction: if the latter, then there is jurisdiction.

Papa is in this latter category. He brought separate and independent rules claims, which are apart from seeking to set aside a forbidden state court judgment, which both *Noel* and *Feldman* Part II recognize for subject matter jurisdiction, even though Papa openly "denies the legal conclusions" of his prior state court judgments. *Noel* further rules as follows:

> If on the other hand, a federal plaintiff asserts as a legal wrong, an allegedly **illegal act** or **omission** by an adverse party, *Rooker-Feldman* does not bar jurisdiction.

Papa clearly asserted "illegal acts" and "omissions" by the named defendants, who steadfastly refused to process Papa's numerous, legal, precedented and multiple "good cause" motions for reconsideration, in order to correct the shown state court judgment errors, as required by law. Therefore, subject matter jurisdiction exists for *Papa*. *Noel* now continues:

> [Citing *Feldman*], [t]he Court permitted the federal plaintiff's challenge to the local court's legislative act of promulgating its rule

> regulating the bar examination. *Id.* at 487, 103 S.Ct. 1303. This was a challenge to the **validity** of the rule rather than a challenge to an **application** of the rule. * * * [t]he federal plaintiffs were challenging a legislative rather than a judicial decision by the local court – and needed relief against that legislative act . . .

Papa likewise attacked the **validity** of the legislative and non-judicial rule, that was newly invented by defendants to single out Papa and to deny to him the relief that had been processed for others. *See* Arizona Supreme Court Advisory Opinion 92-10, plus Rule 3, ARCAP. Papa further acted under A.R.S. §§ 12-820, which is that Arizona entities and employees are liable for their negligence and omission to obey true rules that are designed to provide justice. It was defendants' "failure" to "exercise" a duty, which Papa complained of. *See Galati v. Lake Havasu City*, 186 Ariz. 131, 920 P.2d 11 (1996):

> The immunity statute, however, provides immunity for the City's "**exercise**" of a judicial or a legislative function (emphasis in the judgment), A.R.S. §12-820.01(A)(1). We interpret the term "exercise" to require action, not the absence of action. Arizona cases determining what is a judicial or a legislative act require an actual act, not a failure to make a decision. *Saggio v. Connelly*, 147 Ariz. 240, 241, 709 P.2d 847, 875 (1985) . . . (Other citations omitted). We hold, however, that the *absence* of a decision is not the *exercise* of a legislative function

entitled to immunity under A.R.S. section 12-820.01(A)(1). *C.F. Goss v. City of Globe*, 180 Ariz. 229, 231, 833 P.2d 466, 468.

When defendants failed to perform the duty required by the established rules, they became liable for the injury they caused as per A.R.S. § 12-820.01(A)(1) as shown.

III. CONCLUSION

The lower federal courts are split and confused as to the true definition of what constitutes a reviewable "legislative" or "administrative" act by a state court; or what constitutes a forbidden appeal, and also what constitutes "inextricably intertwined." These questions plague federal litigants on this subject, and cause illegal dismissals to valid complaints.

Petitioners now urge this United States Supreme Court to grant this Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, in order to then correct the widespread fallacies that surround the *Rooker-Feldman* doctrine and its application.

DATED: May 15, 2009

Respectfully submitted,

GEORGE M. PAPA AND DEBRA JO PAPA
Pro Se Petitioners

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GEORGE M. PAPA, husband; DEBRA JO PAPA, wife, Plaintiffs-Appellants, v. STATE OF ARIZONA; et al., Defendants-Appellees.	No. 07-16407 D.C. No. CV-06-03060-PHX-MHM MEMORANDUM* (Filed Jan. 23, 2009)

Appeal from the United States District Court
for the District of Arizona
Mary H. Murguia, District Judge, Presiding

Submitted January 13, 2009**

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

George M. Papa and Debra Jo Papa appeal pro se from the district court's judgment dismissing for lack of subject matter jurisdiction their civil rights action challenging allegedly erroneous state court decisions. We have jurisdiction under 28 U.S.C. § 1291. We

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, we deny appellants' request for oral argument.

review de novo, *Noel v. Hall,* 341 F.3d 1148, 1154 (9th Cir. 2003), and we affirm.

The district court properly concluded that the *Rooker-Feldman* doctrine barred the Papas' action because it is a "de facto appeal" of state court decisions, and raises constitutional claims that are "inextricably intertwined" with those prior state court decisions. *See Reusser v. Wachovia Bank, N.A.,* 525 F.3d 855, 859 (9th Cir. 2008) (explaining that a federal action is barred if adjudication of the federal claims would undermine the state ruling or require the district court to review the application of state laws or procedural rules).

The clerk shall file the documents received on September 13, 2007; February 12, 2008; June 5, 2008; June 9, 2008; and June 12, 2008.

All pending motions are denied.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

George Papa and Debra Jo Papa, husband and wife, Plaintiffs, vs. State of Arizona; the Arizona Court of Appeals, Division One; the Arizona Supreme Court; Ruth V. McGregor; John C. Gemmill; and the Arizona Commission on Judicial Conduct Defendants.	No. CIV 06-3060-PHX-MHM **ORDER**

Currently before the Court is Defendants' State of Arizona; Arizona Court of Appeals, Division One; Arizona Supreme Court; Ruth V. McGregor; John C. Gemmill and the Arizona Commission on Judicial Conduct (the "State Defendants") Motion to Dismiss (Dkt.# 10) and Plaintiff George and Debra Jo Papas' ("Plaintiffs") Motion for Summary Judgment (Dkt.# 13); Motion for Judgment to be in Form of Published Opinion (Dkt.# 22-1), and Request to Expedite Judgment (Dkt.# 22-2); and Motion for Entry of Default (Dkt.# 23). After reviewing the papers, the Court issues the following Order.

I. Background

On December 21, 2006, Plaintiffs filed the instant complaint against the State Defendants asserting that Plaintiffs were deprived of property without due process as well as that Plaintiffs' civil rights were violated pursuant to 42 U.S.C. §§ 1981 and 1983. (Dkt.# 1). Plaintiffs' allegations take issue with three prior state court judgments and the Arizona appellate courts handling of Plaintiffs' appeals. For instance, Plaintiffs allege that on June 16, 1987, the Arizona Court of Appeals, Division One, issued a Memorandum decision in *Papa v. Roberts,* 1 CA-CV 8998 ("*Roberts*") that "was false because it did not conform to the evidence, or the law, or the facts of the case." (Complaint, Dkt.# 1, § XV). Plaintiffs assert that the "civil case was for the recovery of a large real estate sales commission and . . . had been decided by mere Summary Judgment against Plaintiffs in Apache County Superior Court." *Id.* § XVI. Plaintiffs allege that the Arizona Court of Appeals erred in affirming the Superior Court's decision by "disregard[ing] the true law and evidence that fully favored Plaintiffs. The Appeals Court also put forth false law and false evidence into its Memorandum Decision that was contrary to the true facts of th[e] case." *Id.* § XVII. Plaintiffs contend that as a result "Plaintiffs were injured with false judgment . . . " *Id.*

Plaintiffs further assert that they were injured by the Arizona Court of Appeals handling of another civil case in which the Plaintiffs were involved; *Papa v. Spurlock,* 1 CA-CV 88-278 ("*Spurlock*"), which also

involved a real estate sales commission allegedly earned by the Plaintiffs. *Id.* § XVIII. Plaintiffs allege that the Arizona Court of Appeals ruling against them "likewise did not conform to the law or the evidence of the case. Instead, the [Arizona Court of Appeals] wrongfully ruled that Plaintiffs had accepted a pittance ($15,000) out-of-court settlement to end the case," which is contrary to the Plaintiffs $388,400.00 fee allegedly earned on the deal. *Id.* Plaintiffs allege that the Arizona Court of Appeals "should have first ruled that Plaintiffs had in fact earned the full real estate sales fee and that to enforce a non-existent out-of-town settlement was unjust." *Id.* § XIX. Additionally, Plaintiffs contend that "the [Arizona Court of Appeals] should have immediately ruled the first *Roberts* case to be in Plaintiff's favor, which would have precluded the *Spurlock* case from being ruined with a false Roberts Memorandum Decision." *Id.* § XX. In sum, with respect to the *Spurlock* case, Plaintiffs allege:

> The Appeals Court did not conform to the true law or evidence of the Spurlock case, as to the earned real estate sales commission. Opposing counsel cheated and broke the law to deceive the court and to steal judgment from Plaintiffs, and the court was so advised, yet the Appeals Court failed to do its duty to reverse its false Memorandum Decision in this Spurlock case. This judicial failure by the Appeals Court obstructed justice; violated

> due process, and caused property (commission) loss for Plaintiffs.

Id. § XXVII.

Plaintiffs further raise error with the Arizona Court of Appeals decision and handling in *Papa v. State,* 1 CA-CV 02-0629 ("*State*"), which according to Plaintiffs "was false because it likewise did not conform to the evidence, or the law, or the facts of the case." *Id.* § XXVIII. According to Plaintiffs, this case derived out of "a Court Order that allowed the Arizona Corporation Commission to take over the Papa Water Utility Company on the pretext of putting the system into compliance with the Arizona Department of Environmental Quality, then return the system to Papa." *Id.* § XXIX. Plaintiffs contend that they "were defrauded of their property since the [Arizona Corporation Commission] did not maintain and return Plaintiff's property as the Court Order required the [Arizona Corporation Commission] to do." *Id.* Plaintiffs assert that the Arizona Court of Appeals committed error in affirming two prior dismissals or rulings of the Superior Court's handling of Plaintiffs' claims. *Id.* § XXXV.

Plaintiffs allege that they filed motions for reconsideration of the prior erroneous Arizona Court of Appeals' decisions in *Roberts, Spurlock* and *State* (Complaint, Exhibits A-C) and that the motions "[are] more than sufficient to show that the Arizona Judicial System was negligent, derelict and incompetent to provide adequate judicial service to Plaintiffs . . . " *Id.*

§ XXXVII. Moreover, Plaintiffs allege that "[s]ince there was 'good cause' shown for reversal to false judgment, the [Arizona Court of Appeals] and the Supreme Court [of Arizona] failed their duty to process these 'good cause' Motions for Reconsideration, which injured Plaintiffs by causing their property loss contrary to law." *Id.* § XXXVIII. Plaintiffs cite *Lindus v. Northern Insur. Co.*, 103 Ariz. 160, 438 P.2d 311 (1968) in support of their argument that they were permitted to file multiple motions for reconsideration "to . . . gain reversal from false judgments and the injury thereto." *Id.* § XLII. Moreover, Plaintiffs allege that Arizona Supreme Court Advisory Opinion 92-10 also supports such motions to the Arizona Court of Appeals. *Id.* § XLIV. As such, Plaintiffs allege that "[t]he appellate court(s) and judges thereto acted outside of their normal duties, scope of employment, and jurisdiction, when they refused to process required review of Plaintiffs' petitions which demonstrated 'good cause' to reverse prior false judgments." *Id.* § XLVII. Moreover, Plaintiffs contend that "[s]ince fraud/collusion resulted in 3 false judgments in Roberts, Spurlock and State . . . then these false judgments are not conclusive or closed. False judgments are required by the 'furtherance of justice' to be reversed by law." *Id.* § LIV.

Lastly, Plaintiffs allege that the Arizona Commission on Judicial Conduct has also engaged in misconduct based upon Plaintiffs' Complaint to the Commission regarding the conduct of Judge John C. Gemmill "for his violation of duty for failure to

process Plaintiffs' 'good cause' motions for reconsideration." *Id.* § LXI. In addition, Plaintiffs allege that Chief Justice Ruth V. McGregor "completely failed her constitutional duty to correct injustice, once it was brought to her attention that such injustice prevailed in the court(s) below. *Id.* § LXX.

Based upon the above allegations and the violations of Plaintiffs' due process and civil rights, Plaintiffs seek punitive damages against all Defendants in the amount of $229,280,736.00, to be paid by the state of Arizona, plus actual damages of $19,106,728.00, and attorneys' fees.

On January 9, 2007, the State Defendants filed the instant Motion to dismiss (Dkt.# 10) pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure asserting that: (1) Plaintiffs' claims are barred by the Eleventh Amendment; (2) Justice McGregor and Judge Gemmill possess judicial immunity; (3) Plaintiffs cannot assert claims under § 1983; (4) Plaintiffs cannot assert claims against non-jural entities; and (5) Plaintiffs cannot assert claims under 42 U.S.C. § 1981. The Plaintiffs responded on January 18, 2007 (Dkt. # 11) as well as submitted a sur-reply to the State Defendants' reply on February 26, 2007. (Dkt.# 18). As such, the motion to dismiss is ripe for the Court's consideration.

II. Jurisdiction

Plaintiffs cite 28 U.S.C. § 1331, federal question jurisdiction as the basis of this Court's jurisdiction to

hear Plaintiffs' suit. The State Defendants, in arguing that dismissal is appropriate, do not contend that this Court lacks subject matter jurisdiction to hear Plaintiffs' suit due to the significance of the *Rooker-Feldman* doctrine, which, as discussed below, bars federal courts from reviewing the merits of prior state court judgments. However, notably, the Plaintiffs in an attempt to distinguish this case from the scope of the *Rooker-Feldman* doctrine, argue in their Complaint that the doctrine does not apply to this case. (Complaint, LXXIV-LXXXVII (pp. 26-30)). In light of the fact that the Plaintiffs raise issue with prior state court decisions and judgments in their Complaint, this Court finds that it is appropriate to address this Court's subject matter jurisdiction and the significance of the *Rooker-Feldman* doctrine *sua sponte*. *See Scholastic Entertainment, Inc. v. Fox Entertainment,* 336 F.3d 982, 985 (9th Cir.2003) (noting that district court has the authority to dismiss an action *sua sponte* for lack of jurisdiction).

A. *Rooker-Feldman* Doctrine

Under what has become known as the *Rooker-Feldman* doctrine, federal district courts lack jurisdiction to review the judgments and decisions of state courts. *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 103 S.Ct. 1303 (1983); *Rooker v. Fidelity Trust Co.,* 263 U.S. 413, 44 S.Ct. 149 (1923). In *Feldman,* 460 U.S. at 486, the Supreme Court stated that district courts do not have jurisdiction "over challenges to state court decisions in particular

cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional." Rather, the court added, "[r]eview of those decisions may be had only in the [the Supreme] Court" pursuant to 28 U.S.C. § 1257. *Id.* The Ninth Circuit has recently provided additional instruction in applying the *Rooker-Feldman* doctrine. In *Noel v. Hall,* 341 F.3d 1148, 1164 (9th Cir.2003), the Ninth Circuit provided this formulation: "[i]f a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district court." In such an instance, that federal plaintiff seeks a forbidden de facto appeal. *See id.* at 1163. In *Worldwide Church of God v. McNair,* 805 F.2d 888, 891 (9th Cir.1986), the Ninth Circuit emphasized that the *Rooker-Feldman* doctrine "applies even when the challenge to the state court decision[s] involves federal constitutional issues," such as challenges anchored to alleged deprivations of federally protected due process and equal protection rights.

In the instant case, based upon a plain review of Plaintiffs' Complaint, outlined above, there can be no doubt that Plaintiffs seek this Court to act as an appellate court of the state court decisions and judgments rendered against them. Essentially, Plaintiffs would have this Court perform a collateral review of the adverse judgments of the Arizona state courts in the *Roberts, Spurlock* and *State* litigations. Plaintiffs' entire complaint appears to be based upon the

premise that the Superior Courts, the Arizona Court of Appeals and the Arizona Supreme Court erroneously decided Plaintiffs' suits and erroneously determined Plaintiffs' appeals. This Court does not have the authority to review such issues. Similarly, Plaintiffs' claims against Justice McGregor and Judge Gemmill are premised on the notion that they improperly decided or handled Plaintiffs' appeals and motions for reconsideration. Such requests by Plaintiffs would require this Court "to conduct a direct review of the state court's judgment and to scrutinize the state court's application of various rules and procedures pertaining to [the] case," which this Court simply cannot do under the *Rooker-Feldman* doctrine. *Allah v. Superior Court,* 871 F.2d 887, 891 (9th Cir.1989). Despite Plaintiffs apparent attempt to frame the allegations involving the prior state court judgments as collateral or incidental to the claims in this case, it is wholly apparent that the prior state court decisions and judgments are at the center of this suit and would require this Court to evaluate the merits and handling of the state court judgments and appeals. For instance, in support of Plaintiffs' due process and civil rights claims, Plaintiffs repeatedly contend that the judgments in the *Roberts, Spurlock* and *State* matters "did not conform to the evidence, or the law, or the facts of the case." Complaint §§ XV, XVIII, XXVIII. This Court lacks the authority to act as a court of collateral review regarding the Plaintiffs' argument in opposition to the decisions and handling of such cases. Rather, only the United States Supreme Court would have the jurisdiction to review

the prior state court judgments.[1] Accordingly, this Court lacks subject matter jurisdiction over Plaintiffs' Complaint and this matter must be dismissed.[2]

III. Conclusion

The Court, upon *sua sponte* review, finds that it lacks subject matter jurisdiction to hear Plaintiffs' suit. Plaintiffs' action constitutes a collateral attack on prior state court decisions and judgments that this Court lacks jurisdiction to hear. Because the Court finds that dismissal is appropriate, the Court will deny as moot the remaining pending motions such as Plaintiffs' Motion for summary judgment. (Dkt.# 13). To the extent Plaintiffs seek this Court's order to be in the form of a published opinion, the Court finds no reason to direct such.

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[1] In Plaintiffs' Complaint, they state that "[i]t is appropriate that this federal court repudiate, if necessary, the unjust, oppressive, and misguided Rooker-Feldman Doctrine, in the event it is itself an obstruction of justice." Complaint § LXXXV. This Court; however, is bound by the well settled precedent that establishes that collateral attacks on state court judgments, such as this one, do not properly invoke a federal district court's subject matter jurisdiction. In light of such precedent, this Court will not depart based upon Plaintiffs' request.

[2] Because the Court has determined that it lacks subject matter jurisdiction, it will not address the other arguments in support of dismissal advanced by the Defendants.

Accordingly,

IT IS HEREBY ORDERED granting the State Defendants' Motion to dismiss to the extent they seek dismissal of the instant suit. (Dkt.# 10). This Court lacks subject matter jurisdiction, and thus, Plaintiffs' Complaint and action are dismissed.

IT IS FURTHER ORDERED denying as moot Plaintiffs' Motion for Summary Judgment (Dkt.# 13); Request to Expedite Judgment (Dkt.# 22-2); and Motion for Entry of Default as to Defendants. (Dkt.# 23).

IT IS FURTHER ORDERED denying Plaintiffs' Motion for Judgment to be in Form of Published Opinion. (Dkt.# 22-1).

IT IS FURTHER ORDERED directing the Clerk of the Court to enter judgment accordingly.

DATED this 5th day of July, 2007.

/s/ Mary H. Murguia
Mary H. Murguia
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

GEORGE M. PAPA, and DEBRA JO PAPA, husband and wife, Plaintiffs, v. STATE OF ARIZONA; ARIZONA COURT OF APPEALS, DIVISION ONE; ARIZONA SUPREME COURT; RUTH V. MCGREGOR; JOHN C. GEMMILL; and ARIZONA COMMISSION ON JUDICIAL CONDUCT. Defendants.	No. CV 06-3060-PHX-MHM **ORDER**

Currently before the Court is Plaintiffs George and Debra Papa's ("Plaintiffs") motion for the Court to give verification that it will entertain or grant Plaintiffs' motion for reconsideration pursuant to Rule 60(b) of the Federal Rules of Civil Procedure. (Dkt. #33). After reviewing the pleadings, the Court will decline to entertain Plaintiffs' motion.

On July 5, 2007, the Court *sua sponte* found that the *Rooker-Feldman* doctrine divested the Court of subject matter jurisdiction over Plaintiffs' complaint. (Dkt. #26). As such, the Court granted Defendants'

motion to dismiss to the extent that it sought dismissal of Plaintiffs' lawsuit, and thus denied as moot Plaintiffs' motion for summary judgment, request to expedite judgment, and motion for entry of default. (*Id.*, p.7). Plaintiffs subsequently appealed the Court's decision to the United States Court of Appeals for the Ninth Circuit. (Dkt. #28). On January 16, 2008, the Acting Clerk of the Court for the Ninth Circuit issued an order that denied Plaintiffs' opposed motion for a limited remand "without prejudice to renewed motion that provides the court with verification that the district court is willing to consider appellants' motion. *See Crateo, Inc. v. Intermark, Inc.*, 536 F.2d 862, cert. denied, 429 U.S. 896 (1976)." Then, on January 30, 2008, Plaintiffs filed the instant motion requesting that the Court indicate that it would either entertain Plaintiffs' Rule 60(b) motion or grant such a motion.

The instant motion, as well as the Ninth Circuit's January 16, 2008 order, derives from the following passage in *Crateo, Inc. v. Intermark, Inc.*: "Because of the pending appeal, the District Court had no jurisdiction to enter an order under Rule 60(b). The most the District Court could do was to either indicate that it would 'entertain' such a motion or indicate that it would grant such a motion. If appellant had received such an indication, its next step would have been to apply to this Court for a remand." 536 F.2d 862, 869 (9th Cir. 1976), *cert. denied,* 429 U.S. 896 (1976). As such, because this lawsuit is currently on appeal before the Ninth Circuit and the Court retains no jurisdiction to enter an order under Rule 60(b), the

most the Court can do is to indicate whether it would entertain or grant Plaintiffs' Rule 60(b) motion if the matter were to come before the Court on the basis of a limited remand from the Ninth Circuit.

Motions for reconsideration are disfavored and are only appropriate if the Court "(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993), cert. denied, 114 S.Ct. 2742 (1994). A motion for reconsideration is not the time to ask the Court to rethink what it has already thought. *See Collins v. D.R. Horton, Inc.*, 252 F.Supp.2d 936, 938 (D.Ariz. 2003) (citation omitted). Accordingly, courts grant such motions only in rare circumstances. *See Sullivan v. Faras-RLS Group, Ltd.*, 795 F.Supp. 305, 308-09 (D.Ariz. 1992).

Here, Plaintiffs contend that their case meets the limited circumstances of "mistake, inadvertence, surprise, or excusable neglect," and thus warrants reconsideration under Rule 60(b). Plaintiffs contend (1) that it was improper for the Court to *sua sponte* find that it lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine because Defendants did not argue for dismissal on that basis in their motion to dismiss (Dkt. #35, pp. 1-3); and (2) that the Court was wrong to find that the *Rooker-Feldman* doctrine applied because Plaintiffs allegedly do not challenge the Arizona state courts' judgments, but rather their

rejection of Plaintiffs' multiple motions for reconsideration "without even remotely considering whether or not there was merit or authorization for this relief." (Dkt. #36, p. 2). First, in its July 5, 2007 order, the Court cited to *Scholastic Entertainment, Inc. v. Fox Entertainment,* 336 F.3d 982, 985 (9th Cir. 2003), for the well-established proposition that a district court has the authority to dismiss an action *sua sponte* for lack of jurisdiction. The Court finds no reason to revisit this decision. Further, the Court finds that Plaintiffs' contention of surprise at the Court's holding that the *Rooker-Feldman* doctrine applied in this case is somewhat disingenuous since, although Defendants did not argue that the doctrine applied to this case in their motion to dismiss, Plaintiffs themselves addressed the *Rooker-Feldman* doctrine in their complaint and argued that the doctrine did not divest the Court of jurisdiction. (Dkt. #1, pp. 26-31).

Second, the Court finds no reason to revisit its decision that the *Rooker-Feldman* doctrine does in fact divest the Court of subject matter jurisdiction over Plaintiffs' complaint. As the Court stated in its July 5, 2007 order, "Plaintiffs' entire complaint appears to be based upon the premise that the Superior Courts, the Arizona Court of Appeals and the Arizona Supreme Court erroneously decided Plaintiffs' suits and erroneously determined Plaintiffs' appeals. This Court does not have the authority to review such issues." (Dkt. #26, p.6). The Court remains steadfast in its determination that it lacks jurisdiction over Plaintiffs' complaint based on the finding that

Plaintiffs' complaint constitutes a de facto appeal under the *Rooker-Feldman* doctrine. District Courts do not have jurisdiction over challenges to a state court's decision in particular cases arising out of judicial proceedings even if those challenges allege that the state court's action was unconstitutional. *District of Columbia Court of Appeals v. Feldman,* 460 U.S. 462, 486 (1983). However, the Court notes that District Courts do "have subject matter jurisdiction over general challenges to state bar rules, promulgated by state courts in non-judicial proceedings, which do not require review of a final state court judgment in a particular case." *Id.*

In the instant action, Plaintiffs attempt to draw a distinction between the elements of their complaint that challenge the state courts' decisions to summarily reject their multitudinous motions for reconsideration and the elements of their complaint that attack the state courts' judgments on the merits of Plaintiff's lawsuit. However, such a distinction here is one without meaning. Plaintiffs' challenge to the summary rejection of their multitudinous motions for reconsideration is inextricably intertwined with Plaintiffs' de facto challenge to the judgments on the merits of their lawsuit. *See Noel v. Hall,* 341 F.3d 1148 (9th Cir. 2003) ("As a practical matter, the 'inextricably intertwined' test of *Feldman* is likely to apply primarily in cases in which the state court both promulgates and applies the rule at issue – that is, to the category of cases in which the local court has acted in both legislative and a judicial capacity – and

in which the loser in state court later challenges in federal court both the rule and its application."). As such, the Court will not entertain, and is not likely to grant, Plaintiffs' Rule 60(b) motion for reconsideration.

Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' motion for the Court to give verification that it will grant Plaintiffs' Rule 60(b) motion is DENIED. (Dkt. #33).

DATED this 14th day of April, 2008.

/s/ Mary H. Murguia
Mary H. Murguia
United States District Judge

WO **September 10, 2008**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

GEORGE M. PAPA, and DEBRA JO PAPA, husband and wife, Plaintiffs, vs. STATE OF ARIZONA, et al., Defendants.	No. CV 06-3060-PHX-MHM **ORDER**

The Court has received and considered Plaintiff's Amended Motion for Reconsideration of Order granting Defendants' Motion to Dismiss Case (Dkt. #39), Plaintiff's Renewed Motion for Recusal (Dkt. #40), Plaintiff's Renewed Motion for Summary Judgment (Dkt. #41), and Defendants' Motion to Strike (Dkt. #42).

"Because of the pending appeal, the District Court [has] no jurisdiction to enter an order under Rule 60(b). The most the District Court [can] do [is] to either indicate that it would 'entertain' such a motion or indicate that it would grant such a motion." *Crateo, Inc. v. Intermark, Inc.*, 536 F.2d 862, 869 (9th Cir. 1976), *cert. denied*, 429 U.S. 896 (1976). The Court has already indicated that it will not entertain or grant a motion for reconsideration under Rule 60(b). *See* dkt. #37. As such, the Court does not retain jurisdiction to

entertain Plaintiffs' subsequent motion for reconsideration.

Further, even if the Court were to reconsider its previous rulings, reconsideration is only appropriate if: (1) the Court is presented with newly discovered, previously unavailable, evidence; (2) the Court committed a clear error of law and the initial decision was manifestly unjust; or (3) there has been an intervening change in controlling law. *Sch. Dist. No. 1J, Multnomah County, Or. v. AC and S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993); *United States ex rel Conveyor Rental & Sales Co. v. Aetna Casualty and Surety Co.*, 1991 WL 495733, *1 (D.Ariz. 1991). A motion for reconsideration may not be used to re-litigate old matters or to raise arguments or present evidence that could have been raised prior to entry of judgment. *See, e.g., Fed. Deposit Ins. Agency v. World Univ.*, 978 F.2d 10, 16 (1st Cir. 1992); *accord Backlund*, 778 F.2d at 1388; 1 Wright, Miller, & Kane, Federal Practice and Procedure: Civil 2d § 2810.1 at 127-28.

Plaintiffs do not allege that the controlling law has changed since the Court rendered its initial decision. Rather, Plaintiffs argue that the Court erred in its interpretation of both the law and the facts of this case. *See* Dkt. #2, p.2. Plaintiffs' arguments merely reiterate the legal arguments set forth in their previous motion. Plaintiffs are not entitled to reconsideration of those arguments. *See Backlund*, 778 F.2d at 1388. Motions for reconsideration can not be used to ask the Court "to rethink what the court has

already thought through," merely because a plaintiff disagrees with the Court's decision. *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983); *See Refrigeration Sales Co.*, 605 F.Supp. at 8. Such disagreements should be dealt with in the normal appellate process, not on a motion for reconsideration. *Database Am., Inc.*, 825 F.Supp. at 1220; *Refrigeration Sales Co., Inc.*, 605 F.Supp. at 7.

Plaintiffs appear to contend that the Court committed a clear error of law and that its initial decision was manifestly unjust. However, as previously stated in the Court's April 15, 2008 Order denying Plaintiffs' Motion for Verification (Dkt.#37), the Court disagrees. In seeking reconsideration, Plaintiffs must show more than a mere disagreement with the Court's decision. *Database Am., Inc.*, 825 F.Supp. at 1220; *Refrigeration Sales Co., Inc.*, 605 F.Supp. at 7. Regardless, as stated above, the Court lacks jurisdiction to enter an order under Rule 60 because of the pending appeal. *Crateo*, 536 F.2d at 869; *McManus v. District of Columbia*, 545 F.Supp.2d 129, 133 (D.D.C. 2008) ("The district court does not regain jurisdiction over the aspects of the case involved in the appeal until the court of appeals issues its mandate."). In addition, as the case is closed, Plaintiff's motion for recusal and motion for summary judgment are inappropriate (as well as moot). Thus, the Court must deny the pending motions, and Plaintiffs must pursue their case on appeal before the United States Court of Appeals for the Ninth Circuit. Plaintiffs appear to understand this, as they state that their "frustration" is "strictly

appellate in nature." (Dkt. #39, p.1). However, Plaintiffs continue to file motions before this Court. Per *Crateo,* the Court may not, and will not, consider any further motions unless directed to do so by the Ninth Circuit.

Accordingly,

IT IS HEREBY ORDERED denying Plaintiff's Amended Motion for Reconsideration (Dkt. #39), Plaintiff's Renewed Motion for Reconsideration (Dkt. #40), and Plaintiff's Renewed Motion for Summary Judgment (Dkt. #41).

IT IS FURTHER ORDERED granting Defendants' Motion to Strike (Dkt. #42) to the extent discussed in this order.

IT IS FURTHER ORDERED based on the foregoing discussion that the Court will summarily deny any further motions filed in this case unless directed otherwise by the United States Court of Appeals for the Ninth Circuit.

DATED this 10th day of September, 2008.

/s/ Mary H. Murguia
Mary H. Murguia
United States District Judge

WO **September 15, 2008**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

GEORGE M. PAPA, and DEBRA JO PAPA, husband and wife, Plaintiffs, vs. STATE OF ARIZONA, et al., Defendants.	No. CV 06-3060-PHX-MHM **AMENDED ORDER**

The Court will amend the Order issued on September 11, 2008 (Dkt. #43), to reflect that Defendants' Motion to Strike (Dkt. #42) is DENIED as moot rather than granted. The Court no longer retains jurisdiction to consider motions filed in this case pending appeal, as discussed in the Court's September 11, 2008 Order. *See* Dkt. #43; *see also Crateo Inc. v. Intermark, Inc.*, 536 F.2d 862, 869 (9th Cir. 1976) ("Because of the pending appeal, the District Court [has] no jurisdiction to enter an order under Rule 60(b); *McManus v. District of Columbia*, 545 F.Supp.2d 129, 133 (D.D.C. 2008) ("The district court does not regain jurisdiction over the aspects of the case involved in the appeal until the court of appeals issues it mandate.").

Accordingly,

IT IS HEREBY ORDERED amending the Court's September 11, 2008 Order (Dkt. #43) to reflect that Defendants' Motion to Strike (Dkt. #42) is DENIED as moot rather than granted.

DATED this 15th day of September, 2008.

/s/ Mary H. Murguia
Mary H. Murguia
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GEORGE M. PAPA, husband; DEBRA JO PAPA, wife, Plaintiffs-Appellants, v. STATE OF ARIZONA; et al. Defendants-Appellees.	No. 07-16407 D.C. No. CV-06-03060-PHX-MHM District of Arizona, Phoenix ORDER (Filed Mar. 24, 2009)

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

The "Motion for Leave of Court for Plaintiffs to File a Supplemental Brief: is denied.

No further filings will be accepted in this closed case.